

Message Text

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C O N F I D E N T I A L STATE 072629

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E.O. 11652: GDS

TAGS: EGEN, RP, US

SUBJ: COUNTER DRAFT TREATY OF AMITY AND ECONOMIC
RELATIONS SUBMITTED BY GOP APRIL 5

FOLLOWING MANILA 04103 ACTION SECSTATE APR 6TH.

QUOTE:

C O N F I D E N T I A L MANILA 4103

1. FOLLOWING TEXT COUNTER DRAFT
TREATY OF AMITY AND
ECONOMIC RELATIONS SUBMITTED BY GOP APRIL 5. (EMBASSY
COMMENTS SEPTTEL): QUOTE

TREATY OF AMITY AND ECONOMIC RELATIONS BETWEEN THE
REPUBLIC OF THE PHILIPPINES AND THE UNITED STATES OF
AMERICA

THE REPUBLIC OF THE PHILIPPINES AND THE UNITED STATES
OF AMERICA, HEREINAFTER REFERRED TO AS THE CONTRACTING PARTIES;
TAKING NOTE OF THEIR EXISTING FRIENDLY RELATIONS;

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CONSCIOUS OF THE RELATIVE STAGES OF THEIR DEVELOPMENT

AND THE AVOWED COMMITMENT OF DEVELOPED COUNTRIES, ON A NON-RECIPROCAL BASIS, TO ACCORD HIGH PRIORITY TO THE REDUCTION AND ELIMINATION OF BARRIERS TO THE EXPORT OF PRODUCTS OF CURRENT AND POTENTIAL INTEREST TO DEVELOPING COUNTRIES, AND TO ALLOW DEVELOPING COUNTRIES TO USE SPECIAL MEASURES TO PROMOTE THEIR TRADE AND DEVELOPMENT IN ACCORDANCE WITH THE GENERAL AGREEMENT ON TARIFF AND TRADE AND WITH THE GENERALIZED SYSTEM OF PREFERENCES.

DESIROUS OF MAINTAINING AND EXPANDING THEIR TRADE RELATIONS AND CREATING FAVORABLE CONDITIONS FOR INVESTMENTS BY NATIONALS AND COMPANIES OF EITHER COUNTRY IN THE TERRITORY OF THE OTHER IN ACCORDANCE WITH THEIR RESPECTIVE NEEDS AND OBJECTIVES;
AND

RECOGNIZING THAT THERE IS A NEED TO REPLACE THE EXECUTIVE AGREEMENT CONCERNING TRADE AND RELATED MATTERS BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE UNITED STATES OF AMERICA HAVE AGREED AS FOLLOWS:

ARTICLE I

AS USED AND REFERRED TO IN THIS TREATY:

1) THE TERM "REPUBLIC OF THE PHILIPPINES" SHALL REFER TO THE ENTITY AS PRESENTLY CONSTITUTED AND WHOSE NATIONAL TERRITORY AS DEFINED IN ARTICLE I OF ITS CONSTITUTION;

2) THE TERM "UNITED STATES OF AMERICA" SHALL INCLUDE THE STATES THEREOF, THE DISTRICT OF COLUMBIA, GUAM, PUERTO RICO, WAKE ISLAND AND U.S. TRUST TERRITORIES AND OVERSEAS POSSESSIONS;

3) THE TERM "NATIONALS" SHALL MEAN:

A) WITH RESPECT TO THE REPUBLIC OF THE PHILIPPINES, CITIZENS WITHIN THE MEANING OF ARTICLE III OF ITS CONSTITUTION;

B) WITH RESPECT TO THE UNITED STATES OF AMERICA, CITIZENS AND NATIONALS WITHIN THE MEANING OF THE FEDERAL LAWS OF THE UNITED STATES;

4) THE TERM "COMPANY" SHALL MEAN:

A) WITH RESPECT TO THE REPUBLIC OF THE PHILIPPINES, ANY PARTNERSHIP, CORPORATION, ASSOCIATION, OR ANY FORM OF ORGANIZATION OR ENTITY, WHETHER ORGANIZED FOR PROFIT OR NOT, CONFIDENTIAL

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CREATED, ORGANIZED OR LICENSED AND COMPLYING WITH THE MINIMUM PERCENTAGES OF OWNERSHIP BY FILIPINO CITIZENS REQUIRED FOR THE ACTIVITIES IN WHICH IT IS LICENSED TO ENGAGE UNDER THE LAWS OF THE REPUBLIC OF THE PHILIPPINES;

B) WITH RESPECT TO THE UNITED STATES OF AMERICA, ANY PARTNERSHIP, CORPORATION, ASSOCIATION, JOINT STOCK COMPANY, OTHER JURIDICAL PERSON OR OTHER ENTITY WHETHER ORGANIZED FOR PROFIT OR NOT, WHICH IS CREATED AND ORGANIZED UNDER THE LAWS

OF THE UNITED STATES OF AMERICA AS DEFINED IN PARAGRAPH 2 HEREOF.

5) THE TERM "INVESTMENT" SHALL MEAN ANY FREELY CONVERTIBLE CURRENCY ACTUALLY BROUGHT AS EQUITY INTO THE TERRITORY OF, AND REGISTERED WITH THE APPROPRIATE GOVERNMENT AGENCIES OF THE CONTRACTING PARTY IN WHICH THE INVESTMENT IS ACTUALLY MADE. IN CASE THE EQUITY IS MADE IN ASSETS OTHER THAN CASH ACTUALLY BROUGHT INTO THE TERRITORY OF THE OTHER CONTRACTING PARTY, INVESTMENT SHALL MEAN THE VALUE OF SUCH ASSET AS DETERMINED BY AND REGISTERED WITH THE APPROPRIATE GOVERNMENT AGENCIES OF THE CONTRACTING PARTY IN WHICH THE INVESTMENT IS ACTUALLY MADE. THE TERM INVESTMENT ALSO INCLUDES THE REINVESTMENT OF EARNINGS THEREFROM; AND FOREIGN LOANS AND CREDITS WHEN CONVERTED INTO EQUITY AND DULY REGISTERED WITH THE APPROPRIATE GOVERNMENT AGENCIES OF THE CONTRACTING PARTY IN WHICH THE INVESTMENT IS MADE.

6) THE TERM "EARNINGS" SHALL MEAN ANY RETURNS IN WHATEVER FORM, DERIVED FROM INVESTMENTS AS DEFINED IN PARAGRAPH OF THE ARTICLE.

ARTICLE II

1. NATIONALS OF EITHER PARTY SHALL, SUBJECT TO THE LAWS AND REGULATIONS RELATING TO THE ENTRY AND SOJOURN OF ALIENS, BE PERMITTED TO ENTER THE TERRITORIES OF THE OTHER PARTY, TO TRAVEL, THEREIN, FREELY, AND TO RESIDE AT PLACES OF THEIR CHOICE.

2. SUBJECT TO THE CONSTITUTION, LAWS AND ORDERS OF EITHER PARTY, NATIONALS SHALL IN PARTICULAR BE PERMITTED TO ENTER THE TERRITORIES OF THE OTHER PARTY AND TO REMAIN THEREIN FOR THE PURPOSE OF: (A) CARRYING ON TRADE BETWEEN THE TERRITORIES OF THE TWO PARTIES; OR (B) DEVELOPING AND DIRECTING THE OPERATIONS OF AN ENTERPRISE IN WHICH THEY HAVE INVESTED OR ARE ACTIVELY IN PROCESS OF INVESTING A SUBSTANTIAL AMOUNT OF CAPITAL.

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3. THE PROVISIONS OF PARAGRAPH 2 SHALL EXTEND TO (A) SPOUSES AND UNMARRIED MINOR CHILDREN OF PERSONS REFERRED TO IN SUCH PARAGRAPH, IF ACCOMPANYING OR FOLLOWING TO JOIN SUCH PERSONS; AND (B) A QUALIFIED NATIONAL OF EITHER PARTY SEEKING TO ENTER THE TERRITORIES OF THE OTHER PARTY SOLELY FOR THE PURPOSE OF DEVELOPING AND DIRECTING THE OPERATIONS OF AN ENTERPRISE IN THE TERRITORIES OF SUCH OTHER PARTY IN WHICH HIS EMPLOYER HAS INVESTED OR IS ACTIVELY IN THE PROCESS OF INVESTING A SUBSTANTIAL AMOUNT OF CAPITAL, PROVIDED THAT SUCH EMPLOYER IS A NATIONAL OR COMPANY OF THE SAME NATIONALITY AS THE APPLICANT AND THAT THE APPLICANT IS EMPLOYED BY SUCH NATIONAL OR COMPANY IN A RESPONSIBLE CAPACITY.

4. EACH PARTY RESERVES THE RIGHT TO EXCLUDE OR EXPEL NATIONALS OF THE OTHER PARTY ON GROUNDS RELATING TO NATIONAL SECURITY, PUBLIC MORALS, AND HEALTH, AS SET FORTH IN ITS IMMIGRATION AND OTHER LAWS.

ARTICLE III

1. NATIONALS OF EITHER CONTRACTING PARTY SHALL BE ACCORDED NATIONAL TREATMENT WITH RESPECT TO THE APPLICATION OF LAWS AND REGULATIONS WITHIN THE TERRITORIES OF THE OTHER PARTY THAT ESTABLISH A PECUNIARY COMPENSATION, OR OTHER BENEFIT OR SERVICE, ON ACCOUNT OF DISEASE, INJURY OR DEATH ARISING OUT OF AND WITH COURSE OF EMPLOYMENT OR DUE TO THE NATURE OF EMPLOYMENT.

2. IN ADDITION TO THE RIGHT AND PRIVILEGES PROVIDED IN PARAGRAPH 1 OF THE PRESENT ARTICLE NATIONALS OF EITHER PARTY SHALL, WITHIN THE TERRITORIES OF THE OTHER PARTY, BE ACCORDED NATIONAL TREATMENT IN THE APPLICATION OF LAWS AND REGULATIONS ESTABLISHING COMPULSORY SYSTEMS OF SOCIAL SECURITY AND MEDICAL CARE, UNDER WHICH BENEFITS ARE PAID WITHOUT AN INDIVIDUAL TEST OF FINANCIAL NEED: A) AGAINST LOSS OF WAGES OR EARNINGS DUE TO OLD AGE, UNEMPLOYMENT, SICKNESS OR DISABILITY, OR B) AGAINST LOSS OF FINANCIAL SUPPORT DUE TO THE DEATH OF FARTHER, HUSBAND OR OTHER PERSON ON WHOM SUCH SUPPORT HAD DEPENDED.

ARTICLE IV

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1. NATIONALS OF EITHER PARTY SHALL RECEIVE THE MOST CONSTANT PROTECTION AND SECURITY WITHIN THE TERRITORIES OF THE OTHER PARTY, IN NO CASE LESS THAN THAT REQUIRED BY INTERNATIONAL LAW. WHEN ANY SUCH NATIONAL IS IN CUSTODY HE SHALL IN EVERY RESPECT RECEIVE REASONABLE AND HUMANE TREATMENT; AND ON HIS DEMAND THE DIPLOMATIC OR CONSULAR REPRESENTATIVE OF HIS COUNTRY SHALL BE IMMEDIATELY NOTIFIED BY THE APPROPRIATE AUTHORITIES OF THE DETAINING PARTY, AND ACCORDED FULL OPPORTUNITY TO SAFEGUARD HIS INTERESTS. HE SHALL PROMPTLY BE INFORMED OF THE ACCUSATIONS AGAINST HIM, PERMITTED TO COMMUNICATE WITH THE DIPLOMATIC OR CONSULAR REPRESENTATIVES OF HIS COUNTRY, ALLOWED AMPLE FACILITIES TO DEFEND HIMSELF.

2. NATIONALS OF EITHER PARTY WITHIN THE TERRITORIES OF THE OTHER PARTY SHALL, SO LONG AS THEIR ACTIVITIES ARE NOT CONTRARY TO PUBLIC ORDER, NATI
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